IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.1709 of 2007

Date of decision: 30.10. 2007.

M/s.Tefcil Breweries Ltd. and another ....Petitioners

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta,Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.C.N.Singh, Advocate.

For Respondents: Mr.M.S.Chandel, Advocate General with Mr.R.M.Bisht, Dy.A.G. for respondents 1 to 5.

Deepak Gupta, J.(Oral)

The petitioner by means of this writ petition has prayed for the following amongst other reliefs:

> "(I)issue an appropriate writ order or direction directing the respondent 1 to 5 for taking effective steps against the respondent no.6 to 9 and its agents/goons under the law by lodging FIR for their acts of illegal restraint, criminal trespass, assaulting /beating the workers, criminal conspiracy humiliation, threats, creating unrest and law and order problem at the project site, so that the petitioner could go ahead with regard to completion of the construction/installation of plant machinery at the earliest so that the Brewery project could be put to production without further delay and losses.
>
> (II)Issue an writ, order or directions to the Respondent No.1 to 5 to restrain and injunct the respondent No.6 to 9 and its

agents/goons from adopting the measures of beating, shouting, threatening and abusing the petitioner and others workers at the project site and injunct respondent no.6 to 9 and its agents/goons from causing any form of interference in the day to day functioning of the petitioner concern at the project site."

The brief facts leading to filing of the petition are that in the year 1997 approval was granted to the petitioners by the respondent-State of Himachal Pradesh for setting up a Brewery in the industrial area of Nargala, Tehsil Jawali, District Kangra, H.P. 69017 sq.mts. of land in the Industrial area was allotted to the petitioners on 26th August, 1998. According to the petitioners though this plot was allotted to them possession could not be taken over as there was encroachment on the said plot. CWP No.152 of 1999 was filed, purportedly in the public interest, challenging the allotment of industrial plot in favour of the petitioners. The ground of challenge was that the land was village common land and could not have been allotted to the petitioners. This petition was rejected on 17th December, 2004.

As per the letter of allotment entered between the petitioners and the State of Himachal Pradesh, the petitioner was bound to establish its unit within a period of 5 years from the date of agreement failing which the Government had the right to cancel the same. Since the petitioners did not set up the Unit, it appears that a notice was issued to the petitioners by the State of Himachal Pradesh threatening to cancel the provisional allotment in their favour. This order was challenged in CWP No.487 of 2003 by the petitioners and

the same was stayed. Thereafter, when the matter was taken up by this Court on 27.5.2005, learned counsel for the petitioners represented to the Court that the petitioners have already taken steps for erection of building and installation of plant and equipment and prayed that the petitioners may be granted extension by six months to set up the Unit. This petition was disposed of by this Court with the following directions:

> "In view of the aforesaid representation made by learned counsel for the parties, the present writ petition stands disposed of. However, we direct that if the petitioners take effective and substantial steps for setting up the Brewery within the stipulated period of 12 months as mentioned in the aforesaid letter dated 6.5.2005, the respondents shall favourably consider their request for extension of time for further period of six months…"

According to the petitioners, they thereafter entered into an agreement with respondent No.6 to construct the factory. However, respondent No.6 did not work properly and the petitioners asked the respondents No.6 and its agents that respondents 7 to 9 to stop the work. Disputes arose between the petitioners and respondents 6 to 9 which led to the termination of the contract by the petitioners. It is alleged that the respondents 6 to 9 did not handover the vacant possession and created hurdles in the installations of plant and machinery and threatened the persons who had come to install the machinery. These acts are alleged to have taken place on 6th September, 2006. Thereafter, the petitioners sent complaints to the

respondents to lodge FIRs and also asked respondent No.6 to unlock the premises.

We have perused the complaints made by the petitioners to the police. The allegations are very general in nature. No cognizable offence is disclosed. There is no specific allegation showing that who had committed an offence and who was the victim. Neither the name of the victim nor of the assailant is mentioned in any of the complaints. In the first complaint made on 6th September, 2006 it is only mentioned that hurdles are being crated in the installation of plant and machinery and there is harassment and non-cooperation. The offence, if any, is alleged to have taken place on 6th November, 2006 and there is no explanation as to why the petitioners have waited till 11th October, 2007 to file the present petition.

The petition involves highly disputed questions of fact. It appears that there is some dispute between the petitioners and respondents 6 to 9. The jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked to settle such a private dispute. As far as the registration of FIR is concerned, as observed above, the complaints do not disclose any cognizable offence nor do they disclose the name of any specific accused or of any victim. It appears that the petition is a subterfuge to get out of the directions given by this Court in CWP No.487 of 2003. The petitioners cannot be allowed to invoke the extraordinary jurisdiction of this Court for this purpose. There is no merit in the petition which is dismissed in limine.

CMP No.2708 of 2007:

In view of the disposal of the dismissal of the main petition, this application is also dismissed.

(Deepak Gupta),
Judge

October 30, 2007.
PV

(V.K. Ahuja),
Judge